

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgio	Team: Squad #02	CCRB Case #: 202100558	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/07/2021 1:26 AM	Location of Incident: Pacific Street and Buffalo Avenue	18 Mo. SOL 7/7/2022	Precinct: 77		
Date/Time CV Reported Mon, 01/25/2021 6:58 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 01/25/2021 6:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Joshua Navarro	16066	957891	075 PCT
2. DTS Nicki Canady	02568	960316	PBBN SU
3. PO Andrew Tofalli	26431	955584	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro stopped § 87(2)(b)	
B . DTS Nicki Canady	Abuse: Police Officer Nicki Canady stopped § 87(2)(b)	
C . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro frisked § 87(2)(b)	
D . DTS Nicki Canady	Abuse: Police Officer Nicki Canady frisked § 87(2)(b)	
E . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro searched § 87(2)(b)	
F . DTS Nicki Canady	Abuse: Police Officer Nicki Canady searched § 87(2)(b)	
G . PO Andrew Tofalli	Abuse: Police Officer Andrew Tofalli searched § 87(2)(b)	
H . DTS Nicki Canady	Abuse: Police Officer Nicki Canady strip-searched § 87(2)(b)	
I . DTS Nicki Canady	Abuse: Police Officer Nicki Canady interfered with § 87(2)(b) use of a recording device.	
J . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro failed to provide § 87(2)(b) with a business card.	
K . DTS Nicki Canady	Abuse: Police Officer Nicki Canady failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On January 25, 2021, § 87(2)(b) filed this complaint with the CCRB via telephone. The case was initially assigned to Investigator Evan Tims but was reassigned to Investigator Rachel Murgu on May 21, 2021, upon Investigator Tims' resignation from the Agency.

On January 7, 2021, at approximately 1:26 a.m., § 87(2)(b) was walking outside through the § 87(2)(b) Housing complex when he was approached by an unmarked police vehicle. Inside the vehicle were Police Officer Joshua Navarro of the 75th Precinct, Police Officer Nicki Canady of the 81st Precinct, and Police Officer Andrew Tofalli of the 77th Precinct. Police Officers Navarro and Canady exited the vehicle and stopped § 87(2)(b) (**Allegations A and B: Abuse of Authority – Stop – § 87(2)(g)** Police Officer Navarro and Police Officer Canady then frisked § 87(2)(b) (**Allegations C and D: Abuse of Authority – Frisk – § 87(2)(g)** Police Officer Navarro, Police Officer Canady, and Police Officer Tofalli then searched § 87(2)(b) (**Allegations E and F: Abuse of Authority – Search – § 87(2)(g)** and **Allegation G: Abuse of Authority – Search – § 87(2)(g)** Police Officer Canady allegedly put her hand inside § 87(2)(b) pants (**Allegation H: Abuse of Authority – Strip-searched – § 87(2)(g)** § 87(2)(b) raised his cellphone to record what the officers were doing, and Police Officer Canady pushed his phone away from her (**Allegation I: Abuse of Authority – Interference with recording – § 87(2)(g)** Police Officer Navarro and Police Officer Canady failed to provide § 87(2)(b) with business cards or the required information verbally in lieu of a business card (**Allegations J and K: Abuse of Authority – Failure to provide RTKA card – § 87(2)(g)** § 87(2)(g), § 87(4-b)

Body-worn camera (BWC) footage from the cameras of Police Officer Navarro, Police Officer Canady, and Police Officer Tofalli is linked to IAs #38-40 (Board Review 01-03) and summarized in IA #74 (Board Review 04). Cellphone camera video taken and submitted by § 87(2)(b) is linked to IA #12 (Board Review 05) and summarized in IA #60 (Board Review 06).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joshua Navarro stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Nicki Canady stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Joshua Navarro frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Nicki Canady frisked § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Joshua Navarro searched § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Nicki Canady searched § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Andrew Tofalli searched § 87(2)(b)

§ 87(2)(b) was interviewed by telephone on February 5, 2021 (Board Review 08). Police Officer Canady was interviewed at the CCRB on September 7, 2021 (Board Review 09). Police Officer Tofalli was interviewed at the CCRB on December 22, 2021 (Board Review 10). Police Officer Navarro was interviewed at the CCRB on February 10, 2022 (Board Review 11).

It is undisputed that § 87(2)(b) had a wallet in his pocket, and that Police Officer Navarro and Police Officer Canady stopped § 87(2)(b)

§ 87(2)(b) testified that he had nothing on his person besides his phone in his hand and his wallet

in a pocket. He denied having any bulges in his pockets or on his person. As he was walking, § 87(2)(b) noticed a black, unmarked car, but did not react and instead continued walking. As he continued walking, the vehicle drove around the rear of a building and up the block towards him, driving on the sidewalk. § 87(2)(b) had his hand in his left jacket pocket but removed it when the officers were approaching. Police Officer Navarro exited the police vehicle and said, "Stop, don't move, don't take your hand out of your pocket. What is that in your pocket, is that your wallet?" § 87(2)(b) began walking backwards and told Police Officer Navarro not to touch him. § 87(2)(b) further testified that all three officers reached into his pockets, and that Police Officer Navarro did not pat down the outside of his clothing before reaching into his pockets.

Police Officer Navarro testified that he saw § 87(2)(b) walking quickly through the housing complex where the officers were patrolling. § 87(2)(b) appeared to be "cradling" something, with his hands "tight" and his elbows slightly flared. Police Officer Navarro did not see anything in § 87(2)(b) hands when he first observed him but based his belief that § 87(2)(b) was "cradling" something by the way § 87(2)(b) hands and arms were positioned. § 87(2)(b) turned his head in different directions as he moved. § 87(2)(b) appeared to notice the officers, then went down a footpath that the officers could not access in their car. Police Officer Navarro believed that § 87(2)(b) may have been trying to get away from the officers but was not sure, given the distance from him. No more than a few minutes later, the officers saw § 87(2)(b) again, and § 87(2)(b) again seemed to notice them. § 87(2)(b) walked in the street away from the officers, which Police Officer Navarro considered strange. Police Officer Navarro noticed a "weight" in § 87(2)(b) waistband area that caused his clothing to sag. Police Officer Navarro exited the police car. § 87(2)(b) removed his cellphone from a pocket at his waist area and was no longer "cradling" anything. Police Officer Navarro noticed that there was still something weighing down § 87(2)(b) pants. Based on § 87(2)(b) previous "evasiveness" and apparent attempt to "elude" the officers, as well as his "nervous" glances around the housing department and the fact that there was a heavy weight at his waistband, Police Officer Navarro believed that § 87(2)(b) had a weapon on his person. Police Officer Navarro exited the police car and approached § 87(2)(b) took his cellphone out of his pocket and was no longer "cradling" anything. He had a weighty object near his waistband that appeared to be "rectangular in nature." Given the size of the object and the way it looked underneath § 87(2)(b) clothing, Police Officer Navarro believed that the object may be a weapon, specifically a small-caliber firearm. He approached § 87(2)(b) with his arms outstretched in front of him. § 87(2)(b) backed up and may have said, "Don't touch me." Police Officer Navarro further testified that he attempted to grab § 87(2)(b) waistband and to check the area on § 87(2)(b) body where he believed a weapon was concealed, but § 87(2)(b) pushed his hands away. Police Officer Navarro was able to frisk § 87(2)(b) "very briefly" before Police Officer Canady approached, as § 87(2)(b) kept pushing his hands away. Police Officer Navarro felt that there was a heavy object but made no further observations. Police Officer Navarro placed his arms around § 87(2)(b) in a "hugging position" to hold his arms and prevent him from reaching his waist area, so that the situation would be "contained." Police Officer Navarro did not enter any of § 87(2)(b) pockets and was not aware of any other officers entering § 87(2)(b) pockets. Given his body position relative to § 87(2)(b) he could not see where Police Officer Canady touched § 87(2)(b). Once he grabbed § 87(2)(b) in the "hugging position," Police Officer Navarro told Police Officer Canady, "I don't know what it is, I think it's his wallet, but you have to check." Police Officer Canady told Police Officer Navarro something like, "He's good," or "It's good," and Police Officer Navarro released § 87(2)(b).

Police Officer Canady also testified that § 87(2)(b) was walking quickly and looking over his shoulder when the officers observed him. § 87(2)(b) leaned forward as if he were "cradling" an object in front of his body near his waistband. At some point, § 87(2)(b) seemed to notice the

officers and seemed to attempt to conceal the object he held. When she first observed § 87(2)(b) Police Officer Canady could not see what § 87(2)(b) and did not have a sense of the object's size or shape. As the officers observed § 87(2)(b) they communicated to each other that they "suspected [that] he had something, preferably a firearm." Police Officer Canady believed that § 87(2)(b) had a firearm, specifically, given the time of night, the pace at which he was walking, and the way § 87(2)(b) was looking around. After the officers lost sight of § 87(2)(b) and then saw him again from nearer, § 87(2)(b) again appeared to be cradling an object. Police Officer Canady was able to observe § 87(2)(b) from the front and saw "a big bulge" in his coat pocket. The bulge appeared to be "something big... poking out forward from his jacket pocket," and "almost looked kind of like an L-shaped bulge." Though the item protruded from § 87(2)(b) pocket rather than being fully inside his pocket, Police Officer Canady could not observe any further details about the object that § 87(2)(b) appeared to be holding, like the object's color or material. Aside from the time of night, the pace of § 87(2)(b) movements, and the apparent bulge that Police Officer Canady observed, there were no other reasons why she suspected that § 87(2)(b) had a firearm. Police Officer Navarro exited the police vehicle and began approaching § 87(2)(b) trying to explain to § 87(2)(b) why he was stopping him. § 87(2)(b) backed up away from Police Officer Navarro, while Police Officer Navarro approached him and said that he was trying to see if § 87(2)(b) had a weapon in his coat and that it looked like § 87(2)(b) had a weapon. § 87(2)(b) had his hands up with his cell phone in one hand. He still had the bulge in his pocket at this point. Police Officer Canady was unable to observe anything else about the bulge while § 87(2)(b) had his hands up. When Police Officer Navarro approached § 87(2)(b) § 87(2)(b) tried to smack Police Officer Navarro's hands away. Police Officer Canady then exited the police vehicle and approached § 87(2)(b) making no further observations as she approached. Police Officer Canady frisked § 87(2)(b) touching his waistband area, left jacket pocket, and the outside of his left leg going up towards his waistband. Police Officer Navarro grabbed § 87(2)(b) jacket pocket; Police Officer Canady was not aware of Police Officer Navarro making contact with any other part of § 87(2)(b) person during his frisk. By frisking § 87(2)(b) Police Officer Canady determined that he did not have a gun. Once she ascertained that § 87(2)(b) did not have a gun, she was finished frisking him. § 87(2)(b) had his wallet with him and possibly something else, but Police Officer Canady was not aware of what else § 87(2)(b) had. Police Officer Canady denied entering § 87(2)(b) pockets at any point during the stop. Police Officer Canady was "pretty sure" that Police Officer Navarro entered at least one of § 87(2)(b) pockets but had no recollection of any other officers entering § 87(2)(b) pockets aside from what she saw in BWC footage.

Police Officer Tofalli testified that Police Officer Navarro told him to stop the vehicle, then approached § 87(2)(b). He did not recall making any observations of § 87(2)(b) before Police Officer Navarro exited the vehicle. He did not recall any conversation among the officers before Police Officer Navarro exited the vehicle. Police Officer Tofalli did not recall observing the bulge on § 87(2)(b) person. He learned that Police Officer Navarro had noticed a bulge in § 87(2)(b) jacket when he (Police Officer Tofalli) exited the vehicle, and Police Officer Navarro was searching § 87(2)(b) front jacket pocket, where the alleged bulge was. Other than Police Officer Navarro observing a bulge on § 87(2)(b) person, Police Officer Tofalli was not aware of any other reason why § 87(2)(b) was stopped. Police Officer Tofalli initially testified that Police Officer Navarro tried to pat down the pocket where he had seen a bulge, then testified that Police Officer Navarro patted down the pocket. He did not recall Police Officer Canady patting down any of § 87(2)(b) pockets. Police Officer Tofalli never frisked § 87(2)(b) or made any physical contact with him. Police Officer Tofalli did not recall Police Officer Navarro ever entering any of § 87(2)(b) pockets. To his knowledge, Police Officer Canady did not enter any of § 87(2)(b) pockets. Police Officer Tofalli never entered any of § 87(2)(b) pockets.

A Stop Report for this incident was prepared by Police Officer Navarro (Board Review 07). It states that the officers observed § 87(2)(b) for approximately three minutes before stopping him. § 87(2)(b) demeanor and his effort to get away from the officers “by running into the street” away from them led to the officers making contact with him. § 87(2)(b) was suspected of “concealing or possessing a weapon,” as it was believed that he was “cradling” an “object that was consistent with the size and shape of a weapon (small caliber firearm).” Police Officer Navarro approached § 87(2)(b) and told § 87(2)(b) that he believed that the object in § 87(2)(b) possession was a weapon. § 87(2)(b) began to backpedal and tried to get away from Police Officer Navarro. Police Officer Navarro used verbal commands/instructions and restraint to stop § 87(2)(b). When he made contact with § 87(2)(b) tried to swat his hands away from his waistband/midsection, which was the area of concern for Police Officer Navarro. The Report notes that § 87(2)(b) was frisked because he had an object suspected of being a weapon by the officers, and that § 87(2)(b) was not searched. No weapon or contraband was found. The object that was suspected to be a weapon was § 87(2)(b) wallet, “which was bulky in [his] pocket.”

§ 87(2)(b) cellphone video (Board Review 05) shows Police Officer Navarro approaching § 87(2)(b) and telling him to stop, while § 87(2)(b) backs away and tells Police Officer Navarro not to touch him. At timestamp 0:38, Police Officer Navarro appears to make contact with § 87(2)(b). § 87(2)(b) asks why he is touching him, and Police Officer Navarro says, “Stop, stop, stop. I’m making su- what is this? What is this right here? What is it, is this your wallet?” § 87(2)(b) says that it is his wallet. Police Officer Navarro says, “All right, that’s what, all right.” § 87(2)(b) asks again why he is touching him, and Police Officer Navarro says, “I’m making sure —” before § 87(2)(b) tells him to get off of him. Police Officer Navarro tells him to stop in a loud whisper multiple times, while § 87(2)(b) repeatedly tells him to get off of him, raising his voice slightly. The camera briefly appears to capture Police Officer Navarro’s arm at 0:46-47; he is still reaching towards or touching § 87(2)(b). At 0:48, Police Officer Canady is seen approaching from behind Police Officer Navarro. At 0:56, Police Officer Navarro reaches out and seems to squeeze § 87(2)(b) pocket. Both Police Officer Navarro and Police Officer Canady reach towards § 87(2)(b) and seem to make contact with him. At approximately 0:58, both Police Officer Canady and Police Officer Navarro appear to be touching § 87(2)(b). Police Officer Navarro says, “I think it’s his wallet but I’m going to double check.” At approximately 1:05, Police Officer Navarro says, “Check it,” though it is unclear what he is referring to. Police Officer Navarro says, “Check it,” again at 1:09, and Police Officer Canady says, “I did.” At approximately 1:13, the officers appear to physically disengage with § 87(2)(b).

BWC footage from the incident does not capture § 87(2)(b) before the officers exit the vehicle to stop him. Footage from Police Officer Navarro’s camera (Board Review 02) shows Police Officer Navarro exiting the police car (timestamp 0:28) and approaching § 87(2)(b) with his arms outstretched. Police Officer Navarro continues moving towards § 87(2)(b) as § 87(2)(b) backs up away from him. At 0:46, § 87(2)(b) backs into a nearby car, and Police Officer Navarro takes hold of § 87(2)(b) waist. At 0:54, Police Officer Navarro grabs and squeezes § 87(2)(b) jacket pockets. At 1:05, Police Officer Navarro reaches his right hand and cups or pats § 87(2)(b) groin or pocket region. At 1:08, Police Officer Navarro says, “I think it’s his wallet. I think it’s his wallet but I’m going to double check.” At approximately 1:10, Police Officer Navarro lifts up and squeezes § 87(2)(b) jacket and whatever § 87(2)(b) is wearing under it, exposing § 87(2)(b) stomach.

In Police Officer Canady’s BWC footage (Board Review 01), at approximately 1:05, Police Officer Canady reaches toward § 87(2)(b) waist with her left hand. At 1:13, Police Officer Navarro says, “Check it,” and Police Officer Canady says, “I did,” and runs her left hand down and up the inside of § 87(2)(b) left thigh over his pants. This footage appears to show Police Officer

Canady removing her hand from § 87(2)(b) left pants pocket at approximately 1:14. Police Officer Tofalli does not appear to make contact with § 87(2)(b) at any point.

People v. DeBour, 40 N.Y.2d 210 (1976) outlines the requirements for an officer to conduct a stop of an individual. Officers must have reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor in order to forcibly stop and detain that person (Board Review 17). The officers may frisk the stopped individual if they reasonably suspect that the person is armed. It further states that behavior that is susceptible to innocent as well as culpable interpretation will not constitute probable cause, and that innocuous behavior alone does not generate a founded or reasonable suspicion that a crime is at hand.

People v. Jones, 164 A.D.3d 1363 (2018) states that a circumstance such as a person having a nondescript bulge in their jacket pocket, leaning to one side, and walking away from officers without complying with the officer's requests for the person to stop, did not support a reasonable suspicion of particularized criminal action. It further clarifies that a bulging jacket pocket is not indicative of criminality, as a pocket bulge, in contrast to a waistband bulge, could be caused by an innocuous object. (Board Review 20).

People v. Howard, 147 A.D.2d 177 (1989) states that officers are authorized to frisk when they reasonably suspect that they are in danger of physical injury by virtue of the person they are detaining being armed. It also notes that the observation of an unidentifiable bulge in a person's pocket is insufficient as a basis for a frisk or search for a gun (Board Review 18).

People v. Kennebrew, 106 A.D.3d 1107 (2013) further states that an unidentifiable bulge that is readily susceptible to an innocent as well as a guilty explanation is not sufficient to justify a pat-down search (Board Review 19).

Patrol Guide Procedure 212-11 instructs that officers may conduct a Terry Stop/Level 3 encounter, in which a reasonable person would not feel free to disregard the officer and walk away, if they have an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor (Board Review 15). A frisk requires that the officers have a reasonable suspicion that the individual is armed. This procedure defines a search after a frisk as when the officer places their hands inside a pocket or other interior portions of a person's clothing or personal property to remove an object that the member felt during a frisk and reasonably suspects is a weapon or dangerous instrument (Board Review 15).

As mentioned above, it is undisputed that Police Officer Navarro and Police Officer Canady stopped § 87(2)(b) citing § 87(2)(b) posture and apparent movement away from the officers, as well as the jacket pocket bulge the officers eventually observed once they came closer to § 87(2)(b) as their reasons for believing that § 87(2)(b) had a firearm. The investigation did not credit Police Officer Canady's testimony that she saw an L-shaped bulge, specifically, given that § 87(2)(b) and Police Officer Navarro's testimonies were consistent as to the fact that § 87(2)(b) only had his wallet and cell phone with him (neither of which were L-shaped) and the fact that Police Officer Canady could provide no further details about the L-shaped object she reportedly saw protruding from § 87(2)(b) pocket. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Given the officers' testimonies, as well as footage from the incident, the investigation credited that Police Officer Navarro and Police Officer Canady frisked § 87(2)(b) § 87(2)(g)

It is worth noting, however, that as Police Officer Navarro first made contact with § 87(2)(b) he correctly identified the bulge in § 87(2)(b) pocket as his wallet, but then continued to attempt to frisk § 87(2)(b) and to allow Police Officer Canady to attempt the same, and that they both continued to attempt to check § 87(2)(b) pocket even after Police Officer Navarro stated that he believed the bulge to be § 87(2)(b) wallet.

§ 87(2)(g)

Given that footage from the incident shows Police Officer Navarro lifting § 87(2)(b) clothing, exposing his stomach, and appears to show Police Officer Canady removing her hand from § 87(2)(b) pocket, the investigation credited that Police Officer Navarro and Police Officer Canady searched § 87(2)(b). As noted, the frisk of § 87(2)(b) did not uncover anything that could be reasonably suspected of being a weapon or other dangerous instrument. No weapons were ultimately recovered from § 87(2)(b) and it was determined that he only had his wallet and phone with him. § 87(2)(g)

§ 87(2)(g)

Allegation (H) Abuse of Authority: Police Officer Nicki Canady strip-searched § 87(2)(b)

§ 87(2)(b) testified that, during the incident, Police Officer Canady reached beneath his pants and beneath his underwear, directly touching his skin. She touched his penis and his scrotum and "moved them out of the way," seemingly to check if he had anything beneath his scrotum. This contact lasted approximately three to four seconds.

Police Officer Navarro was not aware of Police Officer Canady reaching inside § 87(2)(b) pants and undergarments and making contact with his genitals. He never reached under § 87(2)(b) clothing.

Police Officer Canady denied reaching her hand underneath § 87(2)(b) pants at any point. She denied reaching inside § 87(2)(b) underwear and making contact with his skin at any point.

Police Officer Tofalli did not recall Police Officer Canady putting her hand inside § 87(2)(b) pants. He did not recall hearing § 87(2)(b) complain that an officer entered his pants at any point.

BWC footage from this incident does not capture Police Officer Canady putting her hand into § 87(2)(b) pants. § 87(2)(b) video also does not capture a strip search. Based on the totality of the video footage, it appears that a strip search, as described by § 87(2)(b) does not happen during this incident.

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Nicki Canady interfered with § 87(2)(b) use of a recording device.

§ 87(2)(b) testified that, as the officers were searching him, Police Officer Canady slapped his hand, with which he was holding his phone, and said, “Get the phone out of my face.” Later, when § 87(2)(b) was asking for Police Officer Canady’s name, she reached out and “tapped” his phone.

Police Officer Navarro was only aware of Police Officer Canady telling § 87(2)(b) to get his cellphone out of her face when he put his phone “in her face,” while he was attempting to get the officers’ shield numbers at the end of the incident. Other than this, Police Officer Navarro was not aware of any other officers making contact with § 87(2)(b) phone at any point during the incident.

Police Officer Canady testified that, during the stop, § 87(2)(b) “tried to jam his phone in [her] face,” bringing his phone “very close” to Police Officer Canady’s face, approximately two inches away. § 87(2)(b) did not make contact with Police Officer Canady’s face, as Police Officer Canady moved her head. Police Officer Canady told § 87(2)(b) not to put his phone in her face. She denied touching § 87(2)(b) phone but did not recall whether she touched his wrist. She did not know whether § 87(2)(b) was attempting to hit her with his phone, which is why she moved her head. Police Officer Canady denied touching § 87(2)(b) phone at any point after § 87(2)(b) was frisked and searched. No officer touched § 87(2)(b) phone after he was frisked and searched.

Police Officer Tofalli did not recall any of the officers making contact with § 87(2)(b) phone at any point. He specifically did not recall Police Officer Canady making contact with § 87(2)(b) phone at any point. He did not witness Police Officer Canady hitting § 87(2)(b) phone while he was holding it.

§ 87(2)(b) video (Board Review 05) shows § 87(2)(b) attempting to film Police Officer Canady and Police Officer Navarro as they are frisking him. At 1:05, § 87(2)(b) says something about a “badge number” and moves his camera towards Police Officer Canady. The camera shakes and Police Officer Canady tells § 87(2)(b) not to put it in her face. At approximately 1:31, after Police Officer Canady has offered a business card, § 87(2)(b) moves his camera closer to Police Officer Canady, capturing her name on her shirt. Police Officer Canady flicks her hand at § 87(2)(b) repeatedly, and § 87(2)(b) tells her not to touch him.

Patrol Guide Procedure 203-09 instructs officers that the right to observe and/or record police action can be limited for reasons such as the safety of officers (Board Review 23). Civilians are also not able to record when they are the subject of police action.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Given the physical proximity between § 87(2)(b) and Police Officer Canady while § 87(2)(b) was attempting to film Police Officer Canady, as well as the fact that the officers were grappling with § 87(2)(b) at the time of Police Officer Canady's first apparent contact with § 87(2)(b) cell phone, § 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Joshua Navarro failed to provide § 87(2)(b) with a business card.

Allegation (K) Abuse of Authority: Police Officer Nicki Canady failed to provide § 87(2)(b) with a business card.

It is undisputed that Police Officer Canady offered § 87(2)(b) a business card but did not have one to give him and ultimately did not provide him with one. Police Officer Navarro also did not provide § 87(2)(b) with a business card. It is further undisputed that Police Officer Navarro, Police Officer Canady, and Police Officer Tofalli provided their names and shield numbers to § 87(2)(b) verbally while § 87(2)(b) filmed them.

Police Officer Canady testified that, once she discovered that she did not have a business card to give to § 87(2)(b) she understood that it was her responsibility to provide her name and shield number to him. It was her understanding that she could give her name and shield number to § 87(2)(b) verbally or by writing it down, as long as she did not deny him this information.

Police Officer Navarro did not recall whether he provided his command to § 87(2)(b) at any point. Based on his training, he would have been required to provide a business card if he had one and would have given one to § 87(2)(b). His understanding is that if he does not have a business card, he has to provide his information in some form. He stated that if § 87(2)(b) had asked him to write down his information, he would have done so.

Police Officer Tofalli testified that it was his understanding that officers should provide business cards to civilians who want them. If the officer does not have a business card, they must give their information to the civilian verbally.

§ 87(2)(b) video (Board Review 05) shows, at timestamp 1:14, Police Officer Canady offering a business card to § 87(2)(b) who says that he wants one and also wants all of the officers' shield numbers. He tells Police Officer Navarro that he wants his business card, as well. Police Officer Navarro gestures to the part of his shirt where his name and shield number are displayed and says, "Take my name and number, bro." § 87(2)(b) captures Police Officer Navarro's name and shield number and asks for Police Officer Navarro's business card. Police Officer Canady states that she is out of business cards. At 1:31, Police Officer Navarro asks § 87(2)(b) if he wants to take down his information by hand. § 87(2)(b) says yes and that he wants Police Officer Navarro to write his name and shield number down. Police Officer Canady says, "Yeah, you've got it on your phone, you're recording, right?" § 87(2)(b) turns towards Police Officer Canady and says he needs her to write her name and shield number. Police Officer Canady states that she does not have to write this information down but that she can tell it to him. Police Officer Canady says, "2568 Canady." § 87(2)(b) captures Police Officer Canady's name on her shirt with his camera. At 1:49, § 87(2)(b) turns back to Police Officer Navarro and films his name and shield number while Police Officer Navarro gestures to it and says, "Navarro." None of the officers write their information down for § 87(2)(b).

BWC footage from this incident captures most of what is captured in § 87(2)(b) video. Police Officer Tofalli's footage (Board Review 03) shows, at 1:04, Police Officer Tofalli appearing to look in the vehicle for a business card before stating that he does not have one. At 1:27, Police Officer Tofalli gives his name and shield number twice. § 87(2)(b) comes over and points his cell phone at Police Officer Tofalli, then walks away.

New York City Administrative Code 14-174 instructs that officers must identify themselves when stopping, frisking, and/or searching an individual, providing their name, rank, and command. It further requires officers to offer a business card to the subject of the police action if the stop, frisk, and search do not result in an arrest or summons (Board Review 21).

Patrol Guide Procedure 212-11 instructs officers to offer an RTKA business card after conducting a level 3 stop (Board Review 15).

It is undisputed that Police Officer Navarro and Police Officer Canady did not provide business cards to § 87(2)(b) because they were out of business cards. While they provided their names and shield numbers verbally in lieu of the business cards, the officers failed to verbally provide their ranks and commands to § 87(2)(b) as is printed on the business cards and as is required by Administrative Code §14-174. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- Police Officer Canady has been a member of service for six years and has been a subject in 12 additional CCRB complaints and 34 additional allegations, of which two were substantiated in two cases:
 - § 87(2)(g)
 - 202100913 involved a substantiated allegation of failure to provide a business card against Police Officer Canady. The Board recommended Command Discipline A, and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- Police Officer Navarro has been a member of service for seven years and has been a subject in nine additional CCRB complaints and 36 additional allegations, of which six were substantiated in two cases:
 - 201808163 involved a substantiated allegation of a frisk. The Board recommended Formalized Training, and the NYPD imposed Formalized Training.
 - 202000571 involved two substantiated allegations of physical force, and substantiated allegations of frisk, search (of person), and stop. The Board recommended Charges and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- Police Officer Tofalli has been a member of service for eight years and has been a subject in four additional CCRB complaints and four additional allegations, none of which were substantiated. § 87(2)(g)

- § 87(2)(b) declined to mediate this complaint.
- As of November 9, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 13).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Investigator:	<u>Rachel Murgo</u>	<u>Inv. Rachel Murgo</u>	<u>12 April 2022</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Opoku-Agyemang</u>	<u>4/12/2022</u>
	Signature	Print Title & Name	Date
Reviewer:	<u> </u>	<u> </u>	<u> </u>
	Signature	Print Title & Name	Date